

REMARKS

Applicant concurrently files herewith a petition (and fee) for one-month extension of time.

Claims 1-20 are pending in this Application.

Applicant gratefully acknowledges the Examiner's indication that claims 4, 5, 8-13, and 17-19 would be allowable if rewritten in independent form. However, for at least the reasons discussed below, Applicant respectfully submits that all claims herein are allowable.

Claims 1, 2, 6, 14-16, and 20 stand rejected under 35 U.S.C. §102(e) as being anticipated by Sayers et al. (US 6,539,237, and hereinafter "Sayers"). Claims 3, 7, 9, and 10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Sayers in view of O'Neill (US 2005/0207340).

Applicant respectfully traverses these rejections in the following discussion.

I. THE CLAIMED INVENTION

The claimed invention (e.g., as defined by exemplary claim 1) is directed to a mobile communication network system.

The mobile communication network system includes a mobile communication network, a plurality of external networks, a plurality of mobile terminals, a plurality of gateways for connecting the external networks and the mobile communication network, and a plurality of radio access points for connecting the mobile terminals to the mobile communication network. When packets are transmitted and received between the mobile terminals, the packets are communicated by way of virtual networks that are provided to correspond to each of the external networks on the mobile communication network.

In a conventional mobile communication network system, as described in the Background of the present Application, tunnels are set between mobile terminals and the gateways with external networks, and all communication is realized by way of these tunnels. When communication is implemented between mobile terminals, packets transmitted by the mobile terminals are transmitted to the gateways with the external networks by way of the tunnels, and then again returned to the mobile terminals of the communication partners from the gateways with the external networks by way of the tunnels (e.g., see Application at page 2, lines 6-12).

As a result this process, the technology of the conventional mobile communication network system suffers from problems like considerable delay of the packets and poor efficiency of circuit use due to wasted bandwidth within the mobile communication network (e.g., see Application at page 2, lines 13-15).

The claimed invention, however, provides a mobile communication network system which includes a plurality of external networks and a plurality of gateways for connecting the external networks and a mobile communication network, wherein when packets are transmitted and received between the mobile terminals, the packets are communicated by way of virtual networks that are provided to correspond to each of the external networks on the mobile communication network (e.g., see Application at page 4, line 21 – page 5, line 4).

With this structure, packets no longer need to be transferred by way of external network gateways, and the efficiency of circuit use of the access network is improved (e.g., see Application at page 5, lines 18-20).

II. THE PRIOR ART REJECTIONS

A. The Sayers reference

The Examiner alleges that Sayers teaches claims 1, 2, 6, 14-16, and 20. Applicant respectfully submits, however, that the alleged reference does not teach or suggest each and every feature of the claimed invention.

That is, Sayers does not teach or suggest, “*the packets are communicated by way of virtual networks that are provided to correspond to each of said external networks on said mobile communication network*,” (emphasis added by Applicant) as recited in claim 1, and similarly recited in claims 2 and 6.

The Examiner attempts to equate the private wireless network 22-1...22-W of Sayers to the claimed virtual network (Office Action at page 3, line 15). The Examiner, however, is clearly incorrect.

Indeed, it appears that the Examiner has confused a wireless network with a virtual network.

Applicant submits that one with ordinary skill in the art considers that, “A *virtual network is a computer network that consists, at least in part, of virtual network links. A virtual network link is a link that does not consist of a physical (wired or wireless) connection between two computing devices but is implemented using methods of network*

virtualization” (emphasis added by Applicant) (e.g., see http://en.wikipedia.org/wiki/Virtual_network).

Accordingly, contrary to the Examiner’s allegations, based on the definition of a virtual network, the private wireless network 22-1...22-W of Sayers cannot be analogized to the claimed virtual network. Thus, Sayers fails to satisfy the plain meaning of the claimed invention.

That is, in the claimed invention, the claimed “virtual networks are provided to correspond to each of the external networks in the mobile communication network” (emphasis added).

In contrast, Sayers lacks the teachings of the claimed limitations of claims 1, 2, and 6 including the above quoted limitation. Indeed, based on Fig. 2 of Sayers, although gateways 42-1,...,42-G are provided, which allegedly correspond to each of the external networks, the virtual networks are not provided in Sayers’s system. Thus, Sayers fails to teach or suggest claims 1, 2, and 6.

Furthermore, Applicant submits that Sayers does not teach or suggest, *“when packets are transmitted and received between said mobile terminals, the packets are communicated by way of virtual networks that are provided to correspond to each of said external networks on said mobile communication network,”* (emphasis added by Applicant) as recited in claim 1, and similarly recited in claims 2 and 6.

Indeed, the Examiner has simply failed to address this feature of the claimed invention, and does not even allege that Sayers teaches or suggests this feature (Office Action at page 2, section 4).

The Examiner alleges that Sayers teaches the claimed mobile communication network system. Specifically, the Examiner attempts to analogize routing a session of Sayers to the claimed transmitting and receiving packets between mobile terminals. The Examiner, however, is clearly incorrect.

Indeed, Sayers teaches that the alleged gateways 42 direct calls among the public network facilities, which the Examiner attempts to equate to the claimed external networks, and the private network 14, which the Examiner tries to analogize to the claimed mobile communication network (col. 9, lines 9-15; Fig. 2). This is different from, and fails to teach or suggest, applying virtual networks for transmitting and receiving packets between mobile terminals, Sayers teaches using the alleged virtual networks to transfer a packet between a

public network facilities and a private network. Thus, Sayers fails to satisfy the plain meaning of claim language.

Moreover, insofar as the Examiner alleges that Sayers may be applied to the aforementioned feature of claims 1, 2, and 6, Applicant note that, “*Drawings and pictures can anticipate claims if they clearly show the structure which is claimed. In re Mraz, 455 F.2d 1069, 173 USPQ 25 (CCPA 1972). However, the picture must show all the claimed structural features and how they are put together. Jockmus v. Leviton, 28 F.2d 812 (2d Cir. 1928). The origin of the drawing is immaterial. For instance, drawings in a design patent can anticipate or make obvious the claimed invention as can drawings in utility patents. When the reference is a utility patent, it does not matter that the feature shown is unintended or unexplained in the specification. The drawings must be evaluated for what they reasonably disclose and suggest to one of ordinary skill in the art. In re Aslanian, 590 F.2d 911, 200 USPQ 500 (CCPA 1979).*” (See M.P.E.P. 2125).

The drawings of Sayers do not illustrate, “when packets are transmitted and received between said mobile terminals, the packets are communicated by way of virtual networks that are provided to correspond to each of said external networks on said mobile communication network,” (emphasis added by Applicant) as recited in claim 1, and similarly recited in claims 2 and 6. Indeed, it appears from the drawings that Sayers teaches only communication between the alleged private and public networks.

If the Examiner wishes to apply the alleged reference to the aforementioned feature, then Applicant requests the Examiner to explain precisely where the disclosure of Sayers provides support for the Examiner’s allegations. The drawings of Figs. 2 and 4 of Sayers, alone, do not teach or suggest the claimed feature.

Indeed, Sayers has a different structure and is for a different purpose compared to the claimed system, and has many of the same deficiencies of the conventional systems, as described in the Background of the present Application.

Furthermore, Applicant submits that Sayers fails to teach or suggest, “*wherein said packets are communicated by way of said virtual networks rather than said external networks,*” as recited in claim 14, and similarly recited in claims 15 and 16.

Indeed, the Examiner has simply failed to address claim limitations of claims 14, 15, and 16, and has not explained how Sayers applies to each and every feature of the claimed

invention (Office Action at page 2, section 4).

Accordingly, Applicant requests, should this rejection be maintained, the Examiner provide support for her allegations. That is, the Examiner is specifically requested to point out the features of Sayers (including reference number and specific passage) that the Examiner is analogizing to the features of the claimed invention.

Therefore, the Applicant respectfully submits that Sayers fails to teach or suggest each element of Applicant's claimed invention. Therefore, Applicant respectfully requests the Examiner to reconsider and withdraw this rejection.

B. The 103(a) Sayers and O'Neill rejection

In rejecting claims 3, 7, 9, and 10, the Examiner alleges that Sayers teaches the claimed invention, or in the alternative, one of ordinary skill in the art would have combined Sayers with O'Neill to render obvious the claimed invention. Applicant respectfully submits, however, that the alleged references would not teach or suggest each and every feature of the claimed invention.

As an initial matter, Applicant would like to note an error in the Office Action.

That is, the Examiner bases the rejection of claims 3, 7, 9, and 10 only upon Sayers (Office Action at page 4, section 6, lines 1-2). However, in addressing the claims features, the Examiner depends upon O'Neill, as a secondary reference (Office Action at page 5, first paragraph).

Accordingly, Applicant submits that the Examiner's rejection is vague and unclear.

Furthermore, Applicant respectfully traverses this rejection, at least because O'Neill is not cited as remedying the aforementioned deficiencies of Sayers.

Indeed, O'Neill is merely cited for allegedly disclosing means for acquiring setting information. Thus, claims 3, 7, 9, and 10 are allowable for at least the same reasons that the underlying base claims are allowable.

Furthermore, Applicant submits that the examiner has failed to provided any reasoning for combining the features of Sayers with the teachings of O'Neill (see Office Action at page 5, lines 12-14). At most, the Examiner merely makes a circular argument wherein the motivation to modify the primary reference is to obtain the benefits of having modified it.

Applicant respectfully submits, however, "*Rejections on obviousness grounds cannot*

Serial No. 10/512,144
Docket No. NEC03P013-SIb

be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”
(*In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006))

If the Examiner wishes to maintain this rejection, the Examiner must provide articulated rationale to explain why one of ordinary skill would have combined each feature of Sayers that the Examiner is attempting to combine with O’Neill.

Moreover, Applicant respectfully submits that these references are unrelated and would not have been combined as alleged by the Examiner. Thus, no person of ordinary skill in the art would have considered combining these disparate references, absent impermissible hindsight.

Further, Applicant submits that there is no motivation or suggestion in the references (and thus no predictability for one of ordinary skill in the art) to urge the combination as alleged by the Examiner. Indeed, these references clearly do not teach or suggest their combination. Therefore, Applicant respectfully submits that one of ordinary skill in the art would not have been so motivated to combine the references as alleged by the Examiner. Therefore, the Examiner has failed to make a prima facie case of obviousness.

Therefore, Applicant respectfully submits that Sayers in view of O’Neill does not teach or suggest (nor render obvious) each and every feature of the claimed invention. Therefore, Applicant respectfully requests the Examiner to reconsider and withdraw this rejection.

III. FORMAL MATTERS AND CONCLUSION

In view of the foregoing, Applicant submits that claims 1-20, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

Serial No. 10/512,144
Docket No. NEC03P013-SIb

The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Attorney's Deposit Account No. 50-0481.

Respectfully Submitted,

Date: 08/26/09

Farhad Shir

Farhad Shir, Ph.D.
Registration No. 59,403

Sean M. McGinn, Esq.
Registration No. 34,386

**MCGINN INTELLECTUAL PROPERTY
LAW GROUP, PLLC**
8321 Old Courthouse Road, Suite 200
Vienna, Virginia 22182-3817
(703) 761-4100
Customer No. 21254